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BLM ORGANIC ACT

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976: FRUITION OR FRUSTRATION

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The Federal Land Policy and Management Act of 1976[1] was enacted by the Congress on October 21, 1976. The law is drawn largely from the work of the Public Land Law Review Commission, but also incorporates ideas that took form after the Commission's report was filed. Many outdated and archaic public land laws were repealed. Although the General Mining Law of 1872[2] was not repealed, a new requirement that unpatented mining claims be recorded in federal land offices, subject to forfeiture for failure to do so, worked a considerable reform. New management authorities were granted to the Secretary of the Interior, and a degree of coordination in management between Interior and Agriculture was accomplished.

When the Public Land Law Review Commission (PLLRC) was created in 1964,[3] Congress in the same legislation passed a public lands sales act[4] and the Classification and Multiple Use Act,[5] both of which expired by their terms in 1970, six months after the filing of the final report of the PLLRC. A new sales act has now been enacted, but "classification" is now integrated into land use planning procedures as specified in the new act.

Congress has strongly reasserted its authority concerning whether public lands may be withdrawn from mineral develop-

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[1] BLM Organic Act, Pub. L. No. 94-579, 90 Stat. 2773 (codified at 43 U.S.C.A. §§ 1701-1782 and in scattered sections of 7, 10, 16, 22, 25, 30, 40, 48, 49 U.S.C.A. (West Supp. 1977)) [hereinafter referred to as the 1976 Act].

[2] 30 U.S.C. §§ 21-54 (1970).

[3] 43 U.S.C. §§ 1391-1400 (1970). For the legislative history of the creation of the Commission, see H.R. REP. No. 1008, 88th Cong., 1st Sess. 8 (1964); S. REP. No. 1444, 88th Cong., 2d Sess. 5, *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 3741.

[4] 43 U.S.C. §§ 1421-1427 (1970).

[5] *Id.* §§ 1411-1418.

ment. A time limit has been imposed to minimize the segregative effect of withdrawals authorized by the executive branch.

I. APPLICABILITY, STATUTORY TERMINOLOGY, AND POLICY PRONOUNCEMENTS

A. *Terminology*

The 1976 Act defines "public lands," as "land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management . . . ."[6] This differs from the definition of "public lands" in the act creating the Public Land Law Review Commission,[7] principally by excluding the Outer Continental Shelf and by not including lands administered by the U.S. Forest Service or by other agencies, such as the National Park Service or the Fish and Wildlife Service. This concept is also distinguished from the broader and separately defined term, "federal land."[8] Governmental property interests include "interest[s] in land" so that reserved minerals which are within the reach of the Act will thus broaden the BLM's ultimate jurisdiction.

Many parts of the 1976 Act are concerned with land and resource management activities of the Forest Service; the Secretary of Agriculture is subject to many of the same requirements as the Secretary of the Interior.

Besides the redefinition of "public lands," the statute defines "multiple use" and "sustained yield" in order to make these management concepts applicable to the BLM.[9]

The foundation is laid for a change in the administration of the Taylor Grazing Act[10] by defining "allotment management plan" and "grazing permit and lease." The former is defined as "a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands, or on lands within National Forest . . . ."[11] The latter is generically defined as including "any document authorizing use of public lands or lands in National Forests . . . for the purpose of grazing domestic livestock."[12]

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[6] 43 U.S.C.A. § 1702(e) (West Supp. 1977).

[7] 43 U.S.C. § 1400 (1970).

[8] Unfortunately, there is no statutory definition of "federal lands."

[9] 43 U.S.C.A. §§ 1702(c), (h) (West Supp. 1977).

[10] 43 U.S.C. §§ 315 to 315o-1 (1970).

[11] 43 U.S.C.A. § 1702(k) (West Supp. 1977).

[12] *Id.* § 1702(p).

"Public involvement" is generally defined to include the entire spectrum of public and nonfederal participation in the decisional processes of the land use planning and implementation processes mandated by the new law.[13]

Although it does not define "management decisions" as a new term, the 1976 Act clearly invokes new terminology by its description of "management decisions" as a term covering any order of the Secretary to implement land use plans developed or revised under the new Act.[14] Certain "management decisions" and "action pursuant to a management decision" are subject to reversal by legislative veto.[15]

B. *Congressional Policy Pronouncements*

Resolution of the continuing struggle between the executive and legislative branches over the authority to withdraw land, particularly from the effect of the General Mining Laws, is attempted by this inartful language: "The Congress declares that it is the policy of the United States that—. . . Congress delineate the extent to which the Executive may withdraw lands without legislative action . . . ."[16] The new Act also increases the number of types of withdrawals which are subject to congressional authorization or congressional veto.

Federal-state relationships are extensively treated. The Act provides for a different state share formula in the proceeds of the grazing programs,[17] and greater leeway for the states in spending the monies from grazing and mineral leasing.[18] There is a policy preference for helping impacted areas.[19] The Act creates a state role in carrying out some of the law enforcement functions on public lands.[20] It mandates the uniform application of state and

[13] *Id.* § 1702(d).

[14] *Id.* § 1712(e).

[15] *Id.* § 1712(e)(2).

[16] *Id.* § 1701(a)(4). In the absence of specific legislative pronouncement on the subject of withdrawals, the President had been presumed to have such authority and the Supreme Court upheld such an exercise of executive power. *See, e.g.*, United States v. Midwest Oil Co., 236 U.S. 459 (1915).

[17] 43 U.S.C. § 315i (1970).

[18] *Id.*

[19] *Id.* §§ 1701(a)(11), 1712(c)(3), 1747(1).

[20] *Id.* §§ 1733(c), (d).

federal air, water, and noise pollution standards.[21] Land use plans, however, must also conform to local land use planning and zoning "to the maximum extent [the Secretary] finds consistent with Federal law."[22]

The new statute makes it clear that lands should be retained in public ownership unless the needs of specific programs require their sale or lease.[23] Moreover, the disposition of public lands is authorized only if it serves important public objectives.[24] Such public interests would include the expansion of communities, or economic development which cannot be achieved prudently or feasibly without the acquisition of public land.[25]

II. LAND USE PLANNING, CLASSIFICATION, INVENTORY, AND WITHDRAWALS

A. *Land Use Planning*

Land use planning, as treated in the 1976 Act, may be characterized as a "process." Planning is separated into phases, requiring the Secretaries of Agriculture and Interior to use a systematic and interdisciplinary approach in formulating land use decisions.[26] The Act purports to integrate physical, social, and economic values in the decision process at the agency level. In addition to this provision, public involvement is encouraged, and land use plans remain subject to revision even after the Secretary has made a management decision. In applying this approach, some factors are *required to be considered*, including: present and potential uses, relative scarcity of the values involved, availability of alternative means and sites, and long-term benefits to the public as weighed against short-term benefits.[27] On the other hand, priority status is accorded to the designation and protection of "areas of critical environmental concern."[28] Principles of multiple use and sustained yield are required to be applied.[29]

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[21] *Id.* § 1712(c)(8).
[22] *Id.* § 1712(c)(9).
[23] *Id.* §§ 1701(a)(1), (10).
[24] *Id.* § 1713(a)(3).
[25] *Id.*
[26] *Id.* § 1712(c)(2).
[27] *Id.* §§ 1712(c)(5), (6), (7).
[28] *Id.* § 1712(c)(3).
[29] *Id.* § 1712(c)(1).

In sum, the Act requires compliance with numerous procedural standards before any action may begin to implement the land use plans. These requirements, such as coordination of plans with those of other federal agencies, cooperation with state and local governments, and public hearings, necessitate patience and attention to detail in application of the Act.

B. *Classification*

The 1976 Act's procedures for land use planning replace the old concept of "classification" as it was first formally prescribed in the Taylor Grazing Act,[30] and expanded in the Classification and Multiple Use Act of 1964.[31] With the repeal of so many of the disposition statutes, and with the enactment of a strong retention policy, "classification" of land with respect to particular statutory disposition standards is no longer necessary. Instead, the land use planning process must precede the "management decision" that a particular tract of land is not suitable for retention in federal ownership, and therefore may be disposed of. All existing "classification" actions for the public lands are required to be reviewed in accordance with the land use planning provisions of the new Act.

The Recreation and Public Purposes Act[32] is one disposition act which is amended, not repealed.[33] Communities can still gain title to public lands under this act through a special "classification" type process in which it must be shown that the land to be disposed of is to be used for an established or definitely proposed project.[34] Moreover, if the contemplated disposal pertains to more than 640 acres, state land use planning and zoning regulations must be considered.[35]

C. *Inventory*

The new law requires that the Secretary of the Interior prepare and maintain an inventory of all public lands and their resource and other values, including outdoor recreation and sce-

[30] 43 U.S.C. §§ 315 to 315o-1 (1970).
[31] *Id.* §§ 1411-1418 (1970).
[32] *Id.* §§ 869-873 (1970).
[33] 43 U.S.C.A. §§ 869-1, 871a (West Supp. 1977).
[34] *Id.* § 869-1.
[35] *Id.* § 869(a).

nic values.[36] Associated with the inventory requirement is a provision that as funds and manpower are available, the Secretary shall provide means of public identification of the boundaries of the public lands, such as signs and maps, and shall make the inventory available to state and local governments for the purpose of planning and regulating the uses of nonfederal lands in proximity to the public lands.[37]

D. *Withdrawals*

The Act effectively repeals the President's implied authority to withdraw public lands. This is accomplished by the policy statement that Congress should exercise its constitutional authority to withdraw or otherwise designate or dedicate federal lands for specified purposes and delineate the extent to which the Executive may withdraw lands without legislative action.[38]

The Act provides for land use decisions to proceed in an orderly manner. Pending applications for withdrawals are required to be processed and adjudicated to conclusion within fifteen years.[39] Any existing application that has not been processed in that period automatically expires.[40]

In a clear distinction between legislative and executive authority in land use planning, the Secretary has no conclusive, only administrative, jurisdiction over any withdrawal authorized by Congress. Neither can the Secretary make a withdrawal which can only be made by Congress. He may not modify or revoke any withdrawal creating a national monument, or modify or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to the Act, or which thereafter adds lands to the System.[41]

Among the eleven contiguous western states which closed lands to appropriation under the Mining Law of 1872[42] or the Mineral Leasing Act of 1920,[43] presently authorized withdrawals

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[36] *Id.* §§ 1701(a)(2), 1711(a), 1712(c)(4).
[37] *Id.* § 1712(c)(9).
[38] *Id.* § 1701(a)(4).
[39] *Id.* § 1714(g).
[40] *Id.*
[41] *Id.* § 1714(j).
[42] 30 U.S.C. §§ 21-54 (1970).
[43] 30 U.S.C. §§ 181-287 (1970).

are required to be reviewed within fifteen years, except that such review does not apply to withdrawals for Indian purposes, or for the National Forest System, the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wildlife Refuge System, or the National System of Trails.[44] The reevaluation is not to be made for lands already classified by Congress or the managing agency as wilderness, primitive, natural areas, or recreation areas.[45] Thus, many withdrawals previously made under implied executive authority are now given recognized legal status.

III. Mining Claim Recordation and Mineral Management

In the new Act, Congress once again required implementation of the Mining and Minerals Policy Act of 1970,[46] and also affirmed the policy favoring retention of mineral rights which underlie land that has been disposed of for other than mineral recovery purposes.[47] Congress also expressed a strong policy that ingress and egress rights of mining locators be protected.[48]

The most significant provision regarding mineral interests is the mining claim recordation feature of the new law. Under this procedure, the owner of an unpatented lode or placer mining claim must make certain filings with the BLM.[49] Failure to file as required is deemed conclusively to constitute an abandonment of the mining claim.[50]

IV. Range Management

Title IV of the new Act deals specifically with range management, but Title III, which contains the "organic" provisions for the BLM, also extensively affects range and forage management. Range management decisions must be in accordance with overall land use plans.[51]

The formulation of procedures pertaining to BLM and Forest

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[44] 43 U.S.C.A. § 1714(l)(1).

[45] *Id.*

[46] *Id.* § 1701(a)(12). The Mining and Minerals Policy Act of 1970, Pub. L. No. 91-631, is codified at 30 U.S.C. § 21a (1977 Supp.).

[47] 43 U.S.C.A. § 1719(a) (West Supp. 1977).

[48] *Id.*

[49] *Id.* § 1744(a), (b).

[50] *Id.* § 1744(c).

[51] *Id.* § 1701(a)(8).

Service grazing fees are required to be uniform. New statutory procedures direct the two Secretaries to jointly determine "the value of grazing on the lands under their jurisdiction" and then establish a fee which is equitable to the United States and to the users.[52] The fee determination must give consideration to such factors as the cost of production normally associated with western livestock grazing.[53]

The new law also unifies grazing administration practices between the BLM and the Forest Service. Not only the fees, but the length of the term of a permit must be the same, and permits must contain the same conditions, including those respecting the availability of the land for disposition, the requirement that permittees be paid for their improvements, and priority given to existing permit holders to renew.[54]

V. RIGHTS-OF-WAY

Title V, the general rights-of-way title, applies both to the BLM-administered public lands and to National Forest lands but not to wilderness lands.[55] It does modify the provisions made for gas and oil pipelines in amendments to the Mineral Leasing Act[56] enacted after the Alyeska pipeline decision.[57]

A right-of-way definitionally includes easements, leases, permits, or licenses to occupy, use, or traverse public lands—over, upon, under or through—granted for the purposes listed in Title V of the Act. Grants of rights-of-way may be conditioned upon full disclosure of the applicant's plans, contracts, and agreements; consideration of effects on competition; and furnishing of information to disclose partnership and stock holdings and affiliation.[58]

The management authority of the Secretary of the Interior with respect to grant of rights-of-way across BLM lands in connection with timber harvest is broadened by the new Act. It

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[52] *Id.* § 1751(a).

[53] *Id.*

[54] *Id.* §§ 1752(a)-(c).

[55] *Id.* § 1761(a).

[56] 30 U.S.C. §§ 185(a)-(y) (1977 Supp.).

[57] Pub. L. No. 93-153, which provided for the gas and oil pipeline amendments as set forth in note 56 *supra*, was enacted on Nov. 16, 1973.

[58] 43 U.S.C.A. § 1761(b)(1), (2) (West Supp. 1977).

appears to be at least the equivalent of the authority now vested in the Secretary of Agriculture.

Right-of-way corridors are favored, thus avoiding adverse environmental impacts from the proliferation of rights-of-way. Boundaries must be specified, the term of the grant can be limited as reasonably related to the contemplated use, and other conditions can be imposed, including submission of construction plans and agreement to permit inspection.[59] Mineral and vegetative materials within or without a right-of-way may be used or disposed of only according to prior authorization.[60] Fees are required to reflect fair market value, and must be paid annually in advance.[61] Liability clauses may be inserted by the granting authority and bonds may be required.[62] Provision is made for terminating rights-of-way after abandonment or for noncompliance with conditions.[63]

Public land already subject to rights-of-way, if conveyed pursuant to other land law provisions, must remain subject to the existing right-of-way.[64] This would include retention of federal control of the conditions of the right-of-way grant as circumstances might dictate.

Existing rights-of-way are nominally protected, but the Secretary, with the consent of the holder, may replace an existing permit with one under the new title.

VI. Bureau of Land Management Administration

The "organic" provisions of the Federal Land Policy and Management Act which apply specifically to the Bureau of Land Management make its director a Presidential appointee subject to Senate confirmation.[65] The Director is required to have both a broad background and substantial experience in public land and natural resource management. An associate and as many assistant directors as are necessary are authorized. The substantive "organic" provisions for BLM are committed to the responsibility

[59] *Id.* §§ 1764(a), (b), (d).
[60] *Id.* § 1764(f).
[61] *Id.* § 1764(g).
[62] *Id.* §§ 1764(h), (i).
[63] *Id.* § 1766.
[64] *Id.* § 1769.
[65] *Id.* § 1731(a).

of the Secretary of the Interior, who can delegate them to the Director of the BLM.[66] Withdrawals by public land orders under secretarial authority must be made by a Presidential appointee where appointment is subject to Senate confirmation.

The additional management authority granted to the Secretary with respect to BLM lands is extensive, and leads to an integrated pattern of management. The Secretary of the Interior may acquire lands by eminent domain in order to assure access to the public lands.[67] Lands acquired by the Secretary of the Interior for access to public lands, and lands acquired by the exchange authority for any public purpose assume the status of public lands for management.[68] Specific authority is granted to insert terms, covenants, and conditions in conveyance instruments, but authority to waive compliance with land use plans is withheld.[69]

Under an important new authority, the secretary may make loans to states and political subdivisions against anticipated mineral revenues up to fifty-five percent of the amount for any prospective ten-year period.[70] The purpose of this provision is ostensibly to relieve social or economic impacts occasioned by mineral development at a generous three percent interest rate.

A working capital fund is authorized to be available for management of the public lands without fiscal year limitation, for general administrative purposes.[71] Contracting authority, authority to conduct studies, to enter into cooperative agreements, rulemaking authority, authority to participate in search and rescue operations, provisions for open meetings ("sunshine in government"), and similar administrative details are provided in the legislation.[72]

Special provisions for aiding states are contained in the sec-

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[66] *Id.*

[67] *Id.* § 1715(a).

[68] *Id.* § 1715(c).

[69] *Id.* § 1718.

[70] *Id.* § 1747(1).

[71] *Id.* § 1736.

[72] *Id.* §§ 1733(b) [contracting authority], 1733(a) [authority to conduct studies], 1733(b) [cooperative agreements], 1740 [rulemaking authority], 1742 [authority to participate in search and rescue operations], 1739(e) [open meetings].

tion[73] authorizing the Secretary to convey unsurveyed islands determined to be public lands as well as areas erroneously or fraudulently omitted from the original surveys to states or their political subdivisions under the Recreation and Public Purposes Act,[74] without acreage limitation.

One vestige of the venerable public land principle of "preemption," the favoring of those whose claimed rights to the public lands arose out of the priority of their squatter status, is retained in a provision[75] detailing how the new Act should apply to the Unintentional Trespass Act.[76] The right of first refusal granted to preference holders under that act to buy the lands at fair market value is continued for a limited time period, and all processing of claims under it must be completed within five years.

VII. THE PLLRC RECOMMENDATIONS AND THE 1976 BLM ORGANIC ACT

A. *A Program for the Future*

The Commission's report[77] contains an introductory chapter entitled "A Program for the Future," which summarized the Commission's basic concepts and its recommendations for long-range goals, objectives, and guidelines, respecting the public lands and their management. The drafters of the Federal Land Policy and Management Act of 1976 must have attempted to articulate goals, objectives and guidelines which paralleled those stated by the Commission. As Table 1[78] shows, virtually all of the recommendations contained in the introductory summary are treated in the congressional declarations of policy. Not all of them, however, have been substantively enacted.

The congruence suggested by Table 1 is not emphasized in the legislative history. The House, Senate and Conference Committee reports[79] are virtually silent with respect to the recommendations of the Commission.

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[73] *Id.* §§ 1721(a), (b).

[74] 43 U.S.C. §§ 869 to 869-4 (1970).

[75] 43 U.S.C.A. §§ 1722(a), (b) (West Supp. 1977).

[76] 43 U.S.C. §§ 1431-1435 (1970).

[77] PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND (1970) [hereinafter referred to as the PLLRC REPORT].

[78] Table 1 is reprinted in the Appendix.

[79] H.R. REP. No. 94-1163, 94th Cong., 2d Sess. (1976); S. REP. No. 94-583, 94th Cong., 2d Sess., reprinted in [1976] U.S. CODE, CONG. & AD. NEWS 6175-6238.

A few of the policies are stated in divergent terms, indicating more than mere editorial revision. The Commission's approach to land use planning contained in Recommendation F emphasizes the responsibility of Congress to establish goals and objectives for land use planing, "under the general principle that within a specific unit, consideration should be given to all possible uses and the maximum number of compatible uses [should be] permitted." It also called for recognition that certain uses could be treated as "dominant."

The 1976 Act, on the other hand, gives a great deal more emphasis to the land use planning process. The Secretary of the Interior has the duty to "consider" and "weigh" such matters as present and potential uses, long-term versus short-term benefits, and the relative scarcity of the values involved. The idea of a "dominant use" is a lesser value than in past legislation. The 1976 Act does, however, give priority to the decision processes related to areas of critical environmental concern.

In Recommendation Q the Commission made an attempt to define the various "publics," including the Federal Government itself as both sovereign and proprietor, whose interests should be considered to assure the "maximum benefit for the general public." The 1976 Act does not adopt this concept, nor does it give explicit recognition to the position of the Public Lands Commission that the public lands must serve regional and local needs, including consideration to the dependence of regional and local, social and economic growth.

B. *Planning Future Public Land Use*

Chapter Three of *One Third of the Nation's Land,*[80] entitled "Planning Future Public Land Use," begins the numbered recommendations of the Commission. Table 2[81] outlines these recommendations and action of the Congress in the 1976 Act with respect to each.

The Commission's treatment of "planning" is quite different from that in the 1976 Act. The Commission's fundamental premise was that planning at national, regional, and local levels is

[80] PLLRC REPORT, *supra* note 77, at 41.

[81] Table 2 is reprinted in the Appendix.

intended only to provide a guide for future decisions; in the new legislation, land use planning describes the decisionmaking process itself.

In earlier congressional consideration of the Commission's recommendations, when the House of Representatives' Committee on Interior and Insular affairs was considering H.R. 7211 in the ninety-second Congress, "land use planning" by the Federal Government was included, as the Commission had recommended. Land use planning by states and local governments was an entirely separate legislative proposal. As Committee Chairman Aspinall then said, the pending Public Land Policy Act[82] would have established guidelines for management of the one-third of the nation's land held by the Federal Government, while the separately proposed Land Use Planning Act[83] would encourage land use planning for the remaining two-thirds. He also said, however, that "it is a seamless web with which we deal."

Senators Allott and Jordan, members of the Public Land Law Review Commission, expressed the thought that land use planning for both federal and nonfederal lands should proceed together.

The intransigence of the problem of treating land use planning by and for both the states and the Federal Government in the same legislation probably contributed to the eventual defeat of the effort to pass a National Land Use Policy and Planning Assistance Act. Nonetheless, Senator Jackson's proposal, S. 268, passed the Senate in the ninety-third Congress, but was not affirmatively acted upon in the House.

In H.R. 7211 (the Public Land Policy Act) land use planning for federal lands was not a system for making decisions, but a coordinating process. That bill would have left the agency much more leeway in development of procedures and process, only requiring that whatever process was finally adopted had to be published as a departmental rule. It was a feature of H.R. 7211, as it was with PLLRC, that policy was to be set forth in the statutes.

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[82] H.R. 7211, 92d Cong., 1st Sess. (1972).

[83] H.R. 4332, 92d Cong., 1st Sess. (1972).

C. *Public Land Policy and the Environment*[84]

The congruence between the Commission's recommendations as to policy and that of the Congress in the 1976 Act was close, as has been noted. Congrence in what the Commission said and what came to be the law with respect to management of the public lands in the environmental area is not as close in language, but equally close in emphasis. Part of the credit for this is owed to the courts. As the Commission noted, the National Environmental Policy Act[85] was already law when its report was issued, but the series of cases specifically affecting public land administration were still in the future.

The 1976 Act incorporates one concept not included in the Commission's recommendations, but found in the antecedent proposals for national land use policy legislation already mentioned. "Areas of critical environmental concern" have no analogue in the Commission's recommendations, even though a general emphasis on protection of the environment is present throughout the report.

The proposals in the ninety-second Congress for land use legislation, concerning federal and private lands, were concerned with environmental values. It is notable, however, that "areas of critical environmental concern" were not discussed in H.R. 7211, but only in the general land use planning legislation, S. 268. In this, and in its predecessor, S. 632 in the ninety-first Congress, these areas were definitionally on nonfederal lands.

The Commission's recommendation that Congress provide for the creation and preservation of a natural area system was accompanied with the further observation that educational institutions should be encouraged to assume administrative responsibility for such areas under permit or lease arrangements. This has not been implemented. However, the 1976 Act authorizes the BLM to designate lands as wilderness, subject to the conditions specified in the Wilderness Act,[86] and two special areas, California Desert Conservation Area and King Range National Conservation Area, have been legitimated by legislative discussion.

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[84] Table 3 is reprinted in the Appendix.

[85] 42 U.S.C. §§ 4321-4347 (1973).

[86] 16 U.S.C. §§ 1131-1136 (1970).

Commission Recommendation 23, that Congress authorize and require public land agencies to condition the granting of rights or privileges on compliance with environmental control measures governing operations of nonpublic lands closely related to the right or privilege granted, and Recommendation 24, that the public land environment be protected by imposing protective covenants in disposals of public lands, and acquiring easements on nonfederal lands adjacent to public lands, have been effectuated. In doing this, Congress went somewhat farther, and required the Secretary to insert in patents or other documents of conveyance such terms, covenants, conditions, or reservations that would be necessary to insure proper land use and protection of the public interest. A conveyance subject to such terms, covenants, conditions, or reservations, may not exempt the grantee from compliance with applicable federal or state law or state land use plans.

The implications of post-conveyance federal controls over land use are grave. When a patent no longer ends federal interest in the property conveyed, the basis is established for a wholly new and extensive federal supervision of conformance with the "terms, covenants, conditions, and reservations" deemed necessary by the Secretary of the Interior to insure "proper" land use and protection of the "public interest." This program will be at least as demanding as the supervision of the retained public lands.

D. *Timber Resources*

Congress chose separate legislative vehicles for consideration of some of the reforms it identified as being necessary in timber management. As Table 4[87] shows, only Recommendation 36, recommending controls to assure that timber harvesting is conducted to minimize adverse environmental impacts, could be considered to have been implemented by the Federal Land Policy and Management Act. Nevertheless, the National Forest Management Act of 1976,[88] enacted the same day as the 1976 Act, does furnish considerable cross-reference material.

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[87] Table 4 is reprinted in the Appendix.

[88] Pub. L. No. 94-588, codified in 16 U.S.C.A. §§ 472a, 500, 515, 516, 518, 521b (West Supp. 1977).

E. *Range Resources*

The Commission's recommendations concerning changes in the system of mangement of public lands range resources were framed in terms of retention of the basic system of the Taylor Act,[89] but with modifications to give statutory authority for allocation of forage for wildlife, to specify a market value standard for grazing fees, and to make it somewhat easier for new entrants (those not dependent by use or location) to be given grazing privileges. The Commission recommended a security of tenure policy, but at the same time emphasized a statutory ten-year term for permits, so that the recommendation for "security of tenure" generally could be read as being limited to the right to receive compensation for the unused term if the lands permitted should be taken for other uses. This is hardly the "tenure" the users were seeking.

The decision by the Department of the Interior not to appeal *Natural Resources Defense Council, Inc. v. Morton,*[90] spelled the demise of the Taylor Act scheme of grazing administration; it is not necessary to turn to the 1976 Act to find this result, but it would have accomplished it anyway. Under the settlement terms agreed to by the Interior Department and the plaintiffs, the essential features of grazing administration are to be delineated district-by-district in environmental impact statements which must pass judicial muster under the National Environmental Policy Act.[91] This is "law to apply" which gives the courts a different standard than that in the Taylor Act.[92]

The entirely new provisions respecting grazing administration in the 1976 Act are consistent. Grazing administration must follow the land use planning procedures, and although the new statute does not state that new entrants may be awarded grazing privileges, such is the fair implication of the provision that existing permit holders are entitled only to a preference to renew. Once such preferences are satisfied, there would seem to be no dependency requirement for eligibility for grazing permits.

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[89] 43 U.S.C. §§ 315 to 315o-1 (1970).
[90] 388 F. Supp. 829 (D.D.C. 1974).
[91] 42 U.S.C. § 4332(c) (1973).
[92] 43 U.S.C.A. § 1701(a)(8) (West Supp. 1977).

Table 5[93] shows that a high degree of congruence marks the grazing subject matter, as between the Commission's actions and those of the Congress.

F. *Mineral Resources*[94]

The Federal Land Policy and Management Act of 1976 does not purport to be amendatory of either the General Mining Law[95] or the Mineral Leasing Act of 1920,[96] although it tracks some of the adjective recommendations of the Public Land Law Review Commission. Of particular importance is the matter of greater congressional control over the procedures governing the availability of public lands for mineral development.

The mining claim recordation approach was recommended by the Commission but not in a numbered recommendation.

Certain Commission recommendations, such as the one that Congress adopt a judicial rather than a legislative process to acquire outstanding claims, and that an experimental oil shale project be begun, have been accomplished without legislation.

The Commission identified the problem of whether geothermal steam is a reserved mineral, or water, within the reservation clause of patents under the Stockraising Homestead Act.[97]

G. *Water Resources*[98]

The land-related water problems identified by the Commission have become exacerbated since the Commission's recommendations were filed, and they will not be quickly resolved. Two Supreme Court cases have reinforced the implied reservation doctrine,[99] and at least one state, Colorado, is trying to integrate the doctrine into its water adjudication procedures.

In Recommendation 58, the Commission expressed some doubt as to whether the "watershed" purposes of the Forest Serv-

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[93] Table 5 is reprinted in the Appendix.

[94] Table 6 is reprinted in the Appendix.

[95] 30 U.S.C. §§ 21-54 (1970).

[96] 30 U.S.C. §§ 181-287 (1970).

[97] 43 U.S.C. § 299 (1970). For additional authority pertaining to geothermal energy, see the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1970).

[98] Table 7 is reprinted in the Appendix.

[99] Cappaert v. United States, 426 U.S. 128 (1976); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976).

ice Organic Act of 1897,[100] the Weeks Act,[101] or the Multiple Use Act,[102] were broad enough to justify acquiring lands or retaining them in federal ownership. The new Act's definition of multiple use makes no change in the language in this respect, but the retention and acquisition clauses of the new Act are clearly adequate to conform to the recommendation.

H. *Fish and Wildlife Resources*[103]

Several court decisions, such as *New Mexico State Game Commission v. Udall,*[104] emphasize the observation by the Commission that land use decisions affecting game habitat or populations on the public lands are within the Federal Government's preemptive prerogatives under the Supremacy Clause.[105] The cases do not resolve the position taken by the Commission that the federal policy should emphasize conformance with state regulations in this traditionally state-dominated area.

The controversy was partially addressed by the 1976 Act. The Act emphasized that wildlife values would be served by range improvement investments, by specific provisions allowing more flexibility in managing protected free roaming wild horses and burros, and by state dominance of wildlife management.

I. *Intensive Agriculture*[106]

A key PLLRC recommendation was that the homestead and desert land entry laws be repealed, and that public lands be made available for agricultural development through sale procedures. Although the existing entry laws have been repealed, it is doubtful that public land will be made available for agricultural development under the workings of the land use planning procedures which must now be followed for disposition of lands. In the arid Western states, where much of the water has been fully appropriated, a role for the state government with respect to development of public lands is not provided in the new Act, and it is unlikely

[100] 16 U.S.C. §§ 475-482 (1970).
[101] 16 U.S.C. §§ 515-523 (1970).
[102] 16 U.S.C. §§ 528-531 (1970).
[103] Table 8 is reprinted in the Appendix.
[104] 410 F.2d 1197 (10th Cir. 1969).
[105] U.S. CONST. art. VI, § 2.
[106] Table 9 is reprinted in the Appendix.

that one will develop. Certainly no federal legislation which recognizes the dominance of the state water rights system can now be foreseen.

J. *The Outer Continental Shelf*[107]

Congress is currently considering revisions of the Outer Continental Shelf Lands Act.[108] Generally speaking, the recommendations on this subject are not covered in the 1976 Act, and OCS lands are excluded from the definition of public lands in the new Act.

K. *Outdoor Recreation*[109]

The Outdoor Recreation Resources Review Commission, which was a model for PLLRC, made recommendations for the creation of a Bureau of Outdoor Recreation, and for the preparation of national and statewide recreation plans. The Bureau of Outdoor Recreation continues with its assigned responsibilities; a national recreation plan has been published; and statewide recreation plans have been funded. Recreation, however, has been displaced by an interest in a federal program for the environment, and the urgency of federal action to furnish recreation opportunities on the public lands (and generally) has been considerably tempered.

Many of the recommendations of the Commission respecting outdoor recreation transcend recreation as such. The recommendation that the land managing agencies identify and protect "unique areas of national significance on the public lands" has been substantially adopted by the Congress. Both the statute and Recommendation 79 give lip service to "statewide recreation plans," although their efficacy now seems doubtful. The organic authority of the Bureau of Land Management is inconsistent with the recommendation that additional authority be granted to the Bureau of Outdoor Recreation. Rationing of recreation use was recognized as inevitable by the Commission in national park areas, but the 1976 Act does not seem to contemplate either rationing or any similar concession-type administration of recreation facilities on BLM administered lands.

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[107] Table 10 is reprinted in the Appendix.

[108] 43 U.S.C. §§ 1331-1343 (1970).

[109] Table 11 is reprinted in the Appendix.

L. *Occupancy Uses*[110]

Congress has attempted to consolidate and clarify in a single statute the myriad policies related to the occupancy purposes for which public lands may be made available. It has not followed the recommendation that this be use classification, but the land use planning procedures achieve the same result.

In its report, the Commission expressed preference for disposal rather than leasing or permits. This approach appears to have been rejected by Congress, but the policies respecting size, tenure, and term are substantially adopted. The Congressional action did not provide an entirely new statutory framework to make public lands available for expansion of communities and development of new towns, but the substance of the Commission's recommendation has been achieved.

M. *Tax Immunity*[111]

The Federal Land Policy and Management Act was passed without substantial credit being given to the antecedent work of the Public Land Law Review Commission. When Public Law 94-565 was passed, providing for payments to local governments based upon the acreage of public lands within the jurisdiction, the Committee Reports before the Congress relied heavily upon the Commission's work to justify the legislation. It is noteworthy that the bill was signed, although vigorously opposed by the Administration during legislative consideration.

N. *Land Grants to States*[112]

The 1976 Act is not explicit on the point, but seems clearly to contemplate that no additional land grants be made to states. Its general provisions for review of classification and withdrawals is broad enough to cover the recommendation that the Secretary complete the process of state indemnity selections, although the Act itself is silent on this. No action was taken to erase the limitations placed by the Federal Government on the use of grant lands, or the funds derived from them, nor to expedite the codestral survey program with respect to Alaska's selection of lands.

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[110] Table 12 is reprinted in the Appendix.

[111] Table 13 is reprinted in the Appendix.

[112] Table 14 is reprinted in the Appendix.

O. *Administrative Procedures*[113]

The American Bar Association and the Administrative Conference both joined the Public Land Law Review Commission in recommending greater use of rulemaking and improved adjudicative procedures by the Department of the Interior. Many commentators have emphasized this recommendation. Beyond including judicial review in its policy pronouncements, Congress has not expressly provided for judicial review of public land adjudications where it is not already available, nor has it directly addressed the matter of rulemaking and adjudicative procedures in the public land area.

P. *Trespass and Disputed Title*[114]

The Commission recommended adoption of a uniform federal trespass law, but the 1976 Act does not accomplish that objective. Neither does it make the doctrine of adverse possession available against the United States, although at least one court, the Ninth Circuit, has approached this objective by determining the conduct of the Federal Government could raise an estoppel justifying a decree quieting title in an individual.[115]

Q. *Disposals, Acquisitions, and Exchanges*[116]

Chapter 18 of the Commission's report concerns general policies and principles, unrelated to the "commodity" orientation of many of the chapters. Generally speaking, the recommendations in this chapter were adopted by the Congress in the 1976 Act.

R. *Federal Legislative Jurisdiction*[117]

Kleppe v. New Mexico[118] had the effect of making jurisdiction under the Property Clause[119] as broad as the legislative jurisdiction clause.[120] The 1976 Act did not address the problem, assuming one still remains after *Kleppe*.

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[113] Table 15 is reprinted in the Appendix.
[114] Table 16 is reprinted in the Appendix.
[115] United States v. Wharton, 514 F.2d 406 (9th Cir. 1975).
[116] Table 17 is reprinted in the Appendix.
[117] Table 18 is reprinted in the Appendix.
[118] 426 U.S. 529 (1976).
[119] U.S. CONST. art. IV, § 3, cl. 2.
[120] *Id.* art. I, § 9.

S. *Organization, Administration, and Budgeting Policy*[121]

The Forest Service has not been brought into the Interior Department, nor has a Department of Natural Resources been created. Paradoxically, the creation of a new Department of Energy to which would be transferred many of the Interior Department's energy activities probably will lay the groundwork for a restructured Natural Resources Department which might include both the Forest Service and the civil functions of the Corps of Engineers of the Department of the Army, but this is only speculation.

However, the failure of consolidation has not prevented the accomplishment of a considerable measure of the recommended uniformity of management policy. This uniformity is due, in large part, to the specificity of the standards that Congress has enacted. It is doubtful that greater emphasis on regional administration will occur, but the citizen advisory board recommendation of the Commission has been effectually adopted.

CONCLUSION

The underlying philosophy of the Public Land Law Review Commission was congressional control of land management policy through legislation. The 1976 Act states the same goals, but does not carry through. The land use planning procedures are circumscribed by policy controls which are so general as to allow administrative discretion fundamentally broader than that existing in the displaced preceding system.

The 1976 Act in many respects is comparable to the National Environmental Policy Act of 1969,[122] which also specified procedure and process which came to have a substantive component under judicial interpretation.

The courts, in their expanded review of agency action against the inferred substantive standards of the National Environmental Policy Act,[123] have been able to find congressional warrant for the frustration of projects and programs with long histories of congressional support.

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[121] Table 19 is reprinted in the Appendix.

[122] 42 U.S.C. §§ 4321-4347 (1977 Supp.).

[123] *Id.*

Executive branch tension with the legislative branch over control of traditionally congressionally-dominated public works functions was not eased or altered in Congress' favor by the enactment of NEPA, nor will it be by the enactment of the Federal Land Policy and Management Act of 1976. In the former case, the executive branch has been able to adjust its processes and procedures in such a fashion that ultimate judicial validation of an executive decision carries with it an accompanying determination that Congress has signed off.

The same thing may well happen with the new Act. In spite of many provisions for congressional surveillance, the underlying land use processes, when carried through in the executive branch in a fashion to satisfy judicial scrutiny, will buttress executive action which will be far more dominant in the future than it has been even in the past.

APPENDIX

TABLE ONE

Recommendation	S/E*	S/M**	O***	Enacted In
A. The policy of large-scale disposal of public lands reflected by the majority of statutes in force today be revised and that future disposal should be of only those lands that will achieve maximum benefit for the general public in non-Federal ownership, while retaining in Federal ownership those whose values must be preserved so that they may be used and enjoyed by all Americans. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 1 (1970).	X			43 U.S.C.A. § 1701(a)(1) (West Supp. 1977).
B. An immediate review should be undertaken of all lands not previously designated for any specific use, and of all existing withdrawals, set asides, and classifications of public domain lands that were effected by Executive action to determine the type of use that would provide the maximum benefit for the general public in accordance with standards set forth in this report. *Id.* at 2.	X			*Id.* § 1701(a)(3).
C. Congress should establish national policy in all public land laws by prescribing the controlling standards, guidelines, and criteria for the exercise of authority delegated to executive agencies. *Id.*	X			*Id.* § 1701(a)(4).
D. Congress assert its constitutional authority by enacting legislation reserving unto itself exclusive authority to withdraw or otherwise set aside public lands for specified limited-purpose uses and	X			*Id.*

*Substantially Enacted
**Substantially Modified
***Omitted

	delineating specific delegation of authority to the Executive as to the types of withdrawals and set asides that may be effected without legislative action. *Id.*		
E.	Public land management agencies should be required by statute to promulgate comprehensive rules and regulations after full consideration of all points of view, including protests, with provisions for a simplified administrative appeals procedure in a manner that will restore public confidence in the impartiality and fairness of administrative decisions. Judicial review should generally be available. *Id.* at 2-3.	X	*Id.* §§ 1701(a)(5), (6).
F.	Statutory goals and objectives should be established as guidelines for land-use planning under the general principle that within a specific unit, consideration should be given to all possible uses and the maximum number of compatible uses permitted. This should be subject to the qualification that where a unit, within an area managed for many uses, can contribute maximum benefit through one particular use, that use should be recognized as the dominant use, and the land should be managed to avoid interference with fulfillment of such dominant use. *Id.*	X	*Id.* § 1701(a)(7).
G.	Federal statutory guidelines should be established to assure that Federal public lands are managed in a manner that not only will not endanger the quality of the environment, but will, where feasible, enhance the quality of the environment, both on and off public lands, and that Federal control of the lands should never be used as a shield to permit lower standards than those required by the laws of the state in which the lands are located. The Federal licensing power should be used, under statutory guidelines, to assure these results. *Id.*	X	*Id.* § 1701(a)(8).
H.	Statutory guidelines be established providing generally that the United States receive full value for the use of the public lands and	X	*Id.* § 1701(a)(9).

	Recommendation	S/E*	S/M**	O***	Enacted In
	their resources retained in Federal ownership, except that monetary payment need not represent full value, or so-called market value, in instances where there is no consumptive use of the land or its resources. *Id.*				
I.	Statutory provision be made to assure that when public lands or their resources are made available for use, firm tenure and security of investment be provided so that if the use must be interrupted because of a Federal Government need before the end of the lease, permit, or other contractual arrangement, the user will be equitably compensated for the resulting losses. *Id.* at 4.		X		*Id.* § 1752(g).
J.	The United States make payments in lieu of taxes for the burdens imposed upon state and local governments by reason of the Federal ownership of public lands without regard to the revenues generated therefrom. Such payments should not represent full tax equivalency and the state and local tax effort should be a factor in determining the exact amount to be paid. *Id.*	X			*Id.* § 1701(a)(13).
K.	Statutory authority be granted for the limited disposition of lands administered by the Forest Service where such lands are needed to meet a non-Federal but public purpose, or where disposition would result in the lands being placed in a higher use than if continued in Federal ownership. *Id.* at 5.	X			*Id.* § 1713(a)(3).
L.	Legislation be enacted to provide a framework within which large units of land may be made available for the expansion of existing communities or the development of new cities. Until some experience has been gained in the various mechanisms that might be utilized and a national policy adopted concerning the establishment of new cities generally, Congress		X		*Id.* §§ 1713(a)(3), 1721(a).

	should consider proposals for the sale of land for new cities on a case-by-case basis. *Id.*			
M.	Statutory authority be provided for the sale at full value of public domain lands required for certain mining activities or where suitable only for dryland farming, grazing of domestic livestock, or residential, commercial, or industrial uses, where such sale is in the public interest and important public values will not thereby be lost. *Id.* at 4-5.		X	*Cf. id.* § 1713.
N.	Legislation be enacted to provide flexible mechanisms, including transfer of title at less than full value, to make any federally owned lands available to state and local governments when not required for a Federal purpose if the lands will be utilized for a public purpose. *Id.* at 5.	X		*Id.* § 869.
O.	Generally, in both legislation and administration, the artificial distinctions between public domain and acquired lands of the Federal Government should be eliminated. *Id.* at 6.	X		*Id.* § 1721(e).
P.	Responsibility for public land policy and programs within the Federal Government in both the legislative and executive branches should be consolidated to the maximum practicable extent in order to eliminate, or at least reduce, differences in policies concerning the administration of similar public land programs. *Id.*		X	*Id.* §§ 1701(a)(4), (10).
Q.	In making public land decisions, the Federal Government should take into consideration the interests of the national public, the regional public, the Federal Government as the sovereign, the Federal proprietor, the users of public lands and resources, and the state and local governmental entities within which the lands are located in order to assure, to the extent possible, that the maximum benefit for the general public is achieved. *Id.* at 7.		X	

TABLE TWO

Recommendation	S/E*	S/M**	O***	Enacted In
1. Goals should be established by statute for a continuing, dynamic program of land use planning. These should include: Use of all public lands in a manner that will result in the maximum net public benefit. Disposal of those lands indentified in land use plans as being able to maximize net public benefit only if they are transferred to private or state or local governmental ownership, as specified in other Commission recommendations. Management of primary use lands for secondary uses where they are compatible with the primary purpose for which the lands were designated. Management of all lands not having a statutory primary use for such uses as they are capable of sustaining. Disposition or retention and management of public lands in a manner that complements uses and patterns of use on other ownership in the locality and the region. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 45 (1970).		X		43 U.S.C.A. § 1712(c) (West Supp. 1977).
2. Public land agencies should be required to plan land uses to obtain the greatest net public benefit. Congress should specify the factors to be considered by the agencies in making these determinations, and the analytical system should be developed for their application. *Id.*	X			*Id.*
3. Public lands should be classified for transfer from Federal ownership when net public benefits would be maximized by disposal. *Id.* at 48.		X		*Id.* § 1713(a).
4. Management of public lands should recognize the highest and best use of particular areas of land as dominant over other authorized uses. *Id.*		X		*Id.* § 1732(a).

5. All public land agencies should be required to formulate long range, comprehensive land use plans for each state or region, relating such plans not only to internal agency programs but also to land use plans and attendant management programs of other agencies. Specific findings should be provided in their plans, indicating how various factors were taken into account. *Id.* at 52.		X	*Id.* §§ 1712(a), (c)(9).
6. As an essential first step to the planning system we recommend, Congress should provide for a careful review of (1) all Executive withdrawals and reservations, and (2) BLM retention and disposal classifications under the Classification and Multiple Use Act of 1964. *Id.*	X		*Id.* §§ 1712(d), 1714(f).
7. Congress should provide authority to classify national forest and BLM lands, including the authority to suspend or limit the operation of any public land laws in specified areas. Withdrawal authority should no longer be used for such purpose. *Id.* at 53.	X		*Id.* §§ 1712(d), 1714(a).
8. Large scale, limited or single use withdrawals of permanent or indefinite term should be accomplished only by act of Congress. All other withdrawal authority should be expressly delegated with statutory guidelines to insure proper justification for proposed withdrawals, provide for public participation in their consideration, and establish criteria for executive action. *Id.* at 54.	X		*Id.* § 1714(c), (d).
9. Congress should establish a formal program by which withdrawals would be periodically reviewed and either rejustified or modified. *Id.* at 56.	X		*Id.* § 1714(1).
10. All Executive withdrawal authority, without limitation, should be delegated to the Secretary of the Interior, subject to the continuing limitation of existing law that the Secretary cannot redelegate to anyone other than an official of the Department appointed by the President, thereby making the exercise of this		X	*Cf. id.* § 1714(i).

Recommendation	S/E*	S/M**	O***	Enacted In
authority wholly independent of the public land management operating agency heads. *Id.*				
11. Provision should be made for public participation in land use planning, including public hearings on proposed Federal land use plans, as an initial step in a regional coordination process. *Id.* at 57.	X			*Id.* § 1712(f).
12. Land use planning among Federal agencies should be systematically coordinated. *Id.* at 60.	X			*Id.* § 1712(b), (c).
13. State and local governments should be given an effective role in Federal agency land use planning. Federal land use plans should be developed in consultation with these governments, circulated to them for comments, and should conform to state or local zoning to the maximum extent feasible. As a general rule, no use of public land should be permitted which is prohibited by state or local zoning. *Id.* at 61.		X		*Cf. id.* § 1712(c).
14. Congress should provide additional financial assistance to public land states to facilitate better and more comprehensive land use planning. *Id.* at 63.			X	*Cf. id.* § 1747.
15. Comprehensive land use planning should be encouraged through regional commissions along the lines of the river basin commissions created under the Water Resources Planning Act of 1965. Such commissions should come into existence only with the consent of the states involved, with regional coordination being initiated when possible within the context of existing state and local boundaries. *Id.* at 64.			X	

TABLE THREE

Recommendation	S/E*	S/M**	O***	Enacted In
16. Environmental quality should be recognized by law as an important objective of public land management, and public land policy should be designed to enhance and maintain a high quality environment both on and off the public lands. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 68 (1970).	X			43 U.S.C.A. § 1701(a) (8) (West Supp. 1977).
17. Federal standards for environmental quality should be established for public lands to the extent possible, except that, where state standards have been adopted under Federal law, state standards should be utilized. *Id.* at 70.	X			*Id.* §§ 1712, 1765.
18. Congress should require classification of the public lands for environmental quality and enhancement and maintenance. *Id.* at 73.		X		*Id.* § 1711.
19. Congress should specify the kinds of environmental factors to be considered in land use planning and decisionmaking, and require the agencies to indicate clearly how they were taken into account. *Id.* at 77.		X		*Id.* § 1701.
20. Congress should provide for greater use of studies of environmental impacts as a precondition to certain kinds of uses. *Id.* at 80.	X			National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (1970).
21. Existing research programs related to the public lands should be expanded for greater emphasis on environmental quality. *Id.*		X		*Id.* § 4361.
22. Public hearings with respect to environmental considerations should be mandatory on proposed public land projects or decisions when requested by the states or by the Council on Environmental Quality. *Id.* at 81.	X			43 U.S.C.A. § 1712 (West Supp. 1977).

Recommendation	S/E*	S/M**	O***	Enacted In
23. Congress should authorize and require the public land agencies to condition the granting of rights or privileges to the public lands or their resources on compliance with applicable environmental control measures governing operations off public lands which are closely related to the right or privilege granted. *Id.*	X			*Id.* §§ 1718, 1733.
24. Federal land administering agencies should be authorized to protect the public land environment by (1) imposing protective covenants in disposals of public lands, and (2) acquiring easements on non-Federal lands adjacent to public lands. *Id.* at 82.	X			*Id.* §§ 1701, 1718.
25. Those who use the public lands and resources should, in each instance, be required by statute to conduct their activities in a manner that avoids or minimizes adverse environmental impacts, and should be responsible for restoring areas to an acceptable standard where their use has an adverse impact on the environment. *Id.* at 83.	X			*Id.* § 1718.
26. Public land areas in need of environmental rehabilitation should be inventoried and the Federal Government should undertake such rehabilitation. Funds should be appropriated as soon as practical for environmental management and rehabilitation research. *Id.* at 86.	X			*Id.* § 1701(a)(11).
27. Congress should provide for the creation and preservation of a natural area system for scientific and education purposes. *Id.* at 87.			X	

TABLE FOUR

Recommendation	S/E*	S/M**	O***	Enacted In
28. There should be a statutory requirement that those public lands that are highly productive for timber be classified for commercial timber production as the dominant use, consistent with the Commission's concept of how multiple use should be applied in practice. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 92 (1970).			X	
29. Federal programs on timber production units should be financed by appropriations from a revolving fund made up of receipts from timber sales on these units. Financing for development and use of public forest lands, other than those classified for timber production as the dominant use, would be by appropriation of funds unrelated to receipts from the sale of timber. *Id.* at 95.			X	
30. Dominant timber production units should be managed primarily on the basis of economic factors so as to maximize net returns to the Federal Treasury. Such factors should also play an important but not primary role in timber management on other public lands. *Id.* at 96.		X		National Forest Management Act, 16 U.S.C.A. § 1604 (West Supp. 1977).
31. Major timber management decisions, including allowable-cut determinations, should include specific consideration of economic factors. *Id.* at 97.	X			*Id.*
32. Timber sales procedures should be simplified wherever possible. *Id.* at 97.		X		*Id.* § 472.
33. There should be an accelerated program of timber access road construction. *Id.* at 99.		X		*Id.* § 1608.

Recommendation	S/E*	S/M**	O***	Enacted In
34. Communities and firms dependent on public land timber should be given consideration in the management and disposal of public land. *Id.*			X	
35. Timber production should not be used as a justification for acquisition or disposition of Federal public lands. *Id.* at 101.			X	
36. Controls to assure that timber harvesting is conducted so as to minimize adverse impacts on the environment on and off the public lands must be imposed. *Id.*	X			*Id.* § 1604; 42 U.S.C. § 4332 (1970).

TABLE FIVE

Recommendation	S/E*	S/M**	O***	Enacted In
37. Public land forage policies should be flexible, designed to attain maximum economic efficiency in the production and use of forage from the public land, and to support regional economic growth. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 106 (1970).	X			43 U.S.C.A. § 1752 (West Supp. 1977).
38. The grazing of domestic livestock on the public lands should be consistent with the productivity of those lands. *Id.*	X			*Id.*
39. Existing eligibility requirements should be retained for the allocation of grazing privileges up to recent levels of forage use. Increases in forage production above these levels should be allocated under new eligibility standards. Grazing permits for increased forage production above recent levels should be allocated by public auction among qualified applicants. *Id.* at 108.	X			*Id.*
40. Private grazing on public lands should be pursuant to a permit that is issued for a fixed statutory term and spells out in detail the conditions and obligations of both the Federal Government and the permittee, including provisions for compensation for termination prior to the end of the term. *Id.* at 109.	X			*Id.*
41. Funds should be invested under statutory guidelines in deteriorated public grazing lands retained in Federal ownership to protect them against further deterioration and to rehabilitate them where possible. On all other retained grazing lands, investments to improve grazing should generally be controlled by economic guidelines promulgated under statutory requirements. *Id.* at 114.	X			*Id.* § 1751(b)(1).

Recommendation	S/E*	S/M**	O***	Enacted In
42. Public lands, including those in national forests and land utilization projects, should be reviewed and those chiefly valuable for the grazing of domestic livestock identified. Some such public lands should, when important public values will not be lost, be offered for sale at market value with grazing permittees given a preference to buy them. Domestic livestock grazing should be declared as the dominant use on retained lands where appropriate. *Id.* at 115.			X	
43. Control should be asserted over public access to and the use of retained public grazing lands for nongrazing uses in order to avoid unreasonable interference with authorized livestock use. *Id.* at 116.			X	
44. Fair-market value, taking into consideration factors in each area of the lands involved, should be established by law as a basis for grazing fees. *Id.* at 117.	X			*Id.* § 1701(a)(9).
45. Policies applicable to the use of public lands for grazing purposes generally should be uniform for all classes of public lands. *Id.* at 118.	X			*Id.* § 1751.

TABLE SIX

Recommendation	S/E*	S/M**	O***	Enacted In
46. Congress should continue to exclude some classes of public lands from future mineral development. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 123 (1970).	X			43 U.S.C.A. § 1714 (West Supp. 1977).
47. Existing Federal systems for exploration, development, and production of mineral resources on the public lands should be modified. *Id.* at 124.			X	
48. Whether a prospector has done preliminary exploration work or not, he should, by giving written notice to the appropriate Federal land management agency, obtain an exclusive right to explore a claim of sufficient size to permit the use of advanced methods of exploration. As a means of assuring exploration, reasonable rentals should be charged for such claims, but actual expenditures for exploration and development work should be credited against the rentals. Upon receipt of the notice of location, a permit should be issued to the claimholder, including measures specifically authorized by statute necessary to maintain the quality of the environment, together with the type of rehabilitation that is required. When the claimholder is satisfied that he has discovered a commercially mineable deposit, he should obtain firm development and production rights by entering into a contract with the United States to satisfy specified work or investment requirements over a reasonable period of time. When a claimholder begins to produce and market minerals, he should have the right to obtain a patent only to the mineral deposit, along with the right to utilize surface for production. He should have the option of acquiring title or lease to surface upon payment of market value.			X	

	Recommendation	S/E*	S/M**	O***	Enacted In
	Patent fees should be increased and equitable royalties should be paid to the United States on all minerals produced and marketed whether before or after patent. *Id.* at 126.				
49.	Competitive sale of exploration permits or leases should be held whenever competitive interest can reasonably be expected. *Id.* at 132.			X	
50.	Statutory provision should be made to permit hobby collecting of minerals on the unappropriated public domain and the Secretary of the Interior should be required to promulgate regulations in accordance with statutory guidelines applicable to these activities. *Id.* at 134.			X	
51.	Legislation should be enacted which would authorize legal actions by the Government to acquire outstanding claims or interests in public land oil shale subject to judicial determination of value. *Id.*			X	
52.	Some oil shale public lands should be made available now for experimental commercial development by private industry with the cooperation of the Federal Government in some aspects of the development. *Id.* at 135.	X			*Id.* § 1747.
53.	Restrictions on public land mineral activity that are no longer relevant to existing conditions should be eliminated so as to encourage mineral exploration and development and long standing claims should be disposed of expeditiously. *Id.*			X	
54.	The Department of the Interior should continue to have sole responsibility for administering mineral activities on all public lands, subject to consultation with the department having management functions for other uses. *Id.* at 136.		X		*Id.* § 1714(i).

55. In future disposals of public lands for non-mineral purposes, all mineral interests known to be of value should be reserved with exploration and development discretionary in the Federal Government and a uniform policy adopted relative to all reserved mineral interest. *Id.*		X	*Id.* § 1719.

TABLE SEVEN

Recommendation	S/E*	S/M**	O***	Enacted In
56. The implied reservation doctrine of water rights for federally reserved lands should be clarified and limited by Congress in at least four ways: (a) amounts of water claimed, both surface and underground, should be formally established; (b) procedures for contesting each claim should be provided; (c) water requirements for future reservations should be expressly reserved; and (d) compensation should be awarded where interference results with claims valid under state law before the decision in *Arizona v. California*. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 146 (1970).			X	
57. Congress should require the public land management agencies to submit a comprehensive report describing: (1) the objectives of current watershed protection and management programs; (2) the actual practices carried on under these programs; and (3) the demonstrated effect of such practices on the program objectives. Based on such information, Congress should establish specific goals for watershed protection and management, provide for preference among them, and commit adequate funds to achieve them. *Id.* at 150.		X		43 U.S.C.A. § 1741 (West Supp. 1977).
58. "Watershed protection" should in specified, limited cases be: (1) a reason for retaining lands in Federal ownership; and (2) justification for land acquisition. *Id.* at 151.			X	
59. Congress should require federally authorized water development projects on public lands to be planned and managed to give due regard to other values of the public lands. *Id.* at 154.		X		*Id.* § 1701.

TABLE EIGHT

Recommendation	S/E*	S/M**	O***	Enacted In
60. Federal officials should be given clear statutory authority for final land use decisions that affect fish and wildlife habitat or populations on the public lands. But they should not take action inconsistent with state harvesting regulations, except upon a finding of overriding national need after adequate notice to, and full consultation with, the states. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 158 (1970).	X			43 U.S.C.A. § 1732(b) (West Supp. 1977).
61. Formal statewide cooperative agreements should be used to coodinate public land fish and wildlife programs with the states. *Id.* at 159.	X			*Id.* §§ 1732(b), 1737(b).
62. The objectives to be served in the management of fish and resident wildlife resources, and providing for their use on all classes of Federal public lands, should be clearly defined by statute. *Id.* at 160.			X	
63. Statutory guidelines are required for minimizing conflicts between fish and wildlife and other public land uses and values. *Id.* at 164.			X	
64. Public lands should be reviewed and key fish and wildlife habitat zones identified and formally designated for such dominant use. *Id.* at 168.			X	
65. A Federal land use fee should be charged for hunting and fishing on all public lands open for such purposes. *Id.* at 169.		X		*Id.* § 1732(b).
66. The states and the Federal Government should share on an equitable basis in financing fish and wildlife programs on public lands. *Id.* at 173.		X		*Id.*

Recommendation	S/E*	S/M**	O***	Enacted In
67. State policies which unduly discriminate against nonresident hunters and fishermen in the use of public lands through license fee differentials and various forms of nonfee regulations should be discouraged. *Id.* at 174.			X	

TABLE NINE

Recommendation	S/E*	S/M**	O***	Enacted In
68. The homestead laws and the Desert Land Act should be repealed and replaced with statutory authority for the sale of public lands for intensive agriculture when that is the highest and best use of the land. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 177 (1970).		X		*Cf.* 43 U.S.C.A. § 1701 (West Supp. 1977) repealing Homestead laws. The Desert Land Act, 43 U.S.C. §§ 321-339 (1970) is not repealed.
69. Public lands should be sold for agricultural purposes at market value in response to normal market demand. Unreserved public domain lands and lands in land utilization projects should be considered for disposal for intensive agricultural purposes. *Id.* at 179.		X		43 U.S.C.A. § 1713(b) (West Supp. 1977).
70. The states should be given a greater role in the determination of which public lands should be sold for intensive agricultural purposes. The state governments should be given the right to certify or veto the potential agricultural use of public lands but only according to the availablity of state water rights. Consideration should also be given to consistency of use with state or local economic development plans and zoning regulations. *Id.* at 180.		X		*Id.* §§ 1712(b), (c).
71. The allocation of public lands to agricultural use should not be burdened by artificial and obsolete restraints such as acreage limitations on individual holdings, farm residency requirements, and the exclusions of corporations as eligible applicants. *Id.* at 182.			X	*Id.* § 1713(e).

TABLE TEN

Recommendation	S/E*	S/M**	O***	Enacted In
72. Complete authority over all activities on the Outer Continental Shelf should continue to be vested by statute in the Federal Government. Moreover, all Federal functions pertaining to that authority, including navigational safety, safety on or about structures and islands used for mineral activities, pollution control and supervision, mapping and charting, oceanographic and other scientific research, preservation and protection of the living resources of the sea, and occupancy uses of the Outer Continental Shelf should be consolidated within the Government to the greatest possible degree. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 188 (1970).			X	
73. Protection of the environment from adverse effects of activities on the Federal Outer Continental Shelf is a matter of national concern and is a responsibility of the Federal Government. The Commission's recommendations concerning improved protection and enhancement of the environment generally require separate recognition in connection with activities on the Shelf, and agencies having resource management responsibility on the Shelf should be required by statute to review practices periodically and consider recommendations from all interested sources, including the Council on Environmental Quality. In addition, there must be a continuing statutory liability upon lessees for the cleanup of oil spills occasioned from drilling or production activities on Federal Outer Continental Shelf leases *Id.* at 190.			X	
74. Proposals to open areas of the Outer Continental Shelf to leasing, including both the call for nomination of tracts and the invitation to bid, as well as operational orders and waivers of order requirements should be published in at least one newspaper of			X	

	general circulation in each state adjacent to the area proposed for leasing or for which orders are promulgated. Where a state, on the recommendation of local interests or otherwise, believes that Outer Continental Shelf leasing may create environmental hazards, or that necessary precautionary measures may not be provided, or that natural preservation of an area is in the best interest of the public, then, at the state's request, a public hearing should be held and specific findings issued concerning the objections raised. *Id.* at 191.	
75.	The Outer Continental Shelf Lands Act should be amended to give the Secretary of the Interior authority for utilizing methods of competitive sale. Flexible methods of pricing should be encouraged, rather than the present exclusive reliance on bonus bidding plus a fixed royalty. In addition, the timing and size of lease sales, both of which are presently irregular, should be regularized. Futhermore, while discretion to reject bids should remain with the Secretary, this authority should be qualified to require that he state his reasons for rejection. *Id.* at 192.	X
76.	To the extent that adjacent states can prove net burdens resulting from onshore or offshore operations, in connection with Federal mineral leases on the Outer Continental Shelf, compensatory impact payments should be authorized and negotiated. *Id.* at 193.	X
77.	The Federal Government should undertake an expanded offshore program of collection and dissemination of basic geological and geophysical data. As part of that program, information developed under exploration permits should be fully disclosed to the Government in advance of Outer Continental Shelf lease sales. However, industry evaluations of raw data should be treated as proprietary and excluded from mandatory disclosure. *Id.*	X

TABLE ELEVEN

Recommendation	S/E*	S/M**	O***	Enacted In
78. An immediate effort should be undertaken to identify and project those unique areas of national significance that exist on the public lands. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 198 (1970).	X			43 U.S.C.A. § 1701(a)(8) (West Supp. 1977).
79. Recreation policies and programs on those public lands of less than national significance should be designed to meet needs identified by statewide recreation plans. *Id.* at 199.	X			*Id.* § 1712(c)(9).
80. The Bureau of Outdoor Recreation should be directed to review, and empowered to disapprove recreation proposals for public lands administred under general multiple-use policy if they are not in general conformity with statewide recreation plans. *Id.* at 202.			X	
81. A general recreation land use fee, collected through sale of annual permits, should be required of all public land recreation users and, where feasible, additional fees should be charged for use of facilities constructed at Federal expense. *Id.* at 203.			X	
82. Statutory guidelines should be established for resolving and minimizing conflicts among recreation uses and between outdoor recreation and other uses of public lands. *Id.* at 205.			X	
83. The Federal role in assuming responsibility for public accommodations in areas of national significance should be expanded. The Federal Government should, in some instances, finance and construct adequate facilities with operation and maintenance left to concessioners. The security of investment afforded National Park Service concessioners by the Concessioner Act of 1965 should be extended to concessioners operating under			X	

	comparable conditions elsewhere on the Federal public lands. *Id.* at 208.			
84.	Private enterprise should be encouraged to play a greater role in the development and management of intensive recreation use areas on those public lands not designated by statute for concessioner development. *Id.* at 211.		X	
85.	Congress should provide guidelines for developing and managing the public land resources for outdoor recreation. The system of recreation land classification recommended by the Outdoor Recreation Resources Review Commission should be refined and adopted as a statutory guide to be applied to all public lands. *Id.* at 213.		X	*Id.* § 1712(e)(2).
86.	Congress should authorize a program for acquiring and developing reasonable rights-of-way across private lands to provide a more extensive system of access for outdoor recreation and other uses of the public lands. *Id.* at 214.	X		*Id.* § 1765(b).
87.	The direct Federal acquisition of land for recreation purposes should be restricted primarily to support the Federal role in acquiring and preserving areas of unique national significance; acquisitions of additions to Federal multiple use lands for recreation purposes should be limited to inholdings only. *Id.* at 215.		X	*Id.* § 1715.
88.	The Land and Water Conservation Fund Act should be amended to improve financing of public land outdoor recreation programs. During the interim period until the recreation land use fee we recommend is adopted, the Golden Eagle Program should be continued. After essential aquisitions have been completed, the Land and Water Conservation Fund should be available for development of Federal public land areas. *Id.*		X	

TABLE TWELVE

Recommendation	S/E*	S/M**	O***	Enacted In
89. Congress should consolidate and clarify in a single statute the policies relating to the occupancy purposes for which public lands may be made available. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 219 (1970).	X			43 U.S.C.A. §§ 1732(b), (c) (West Supp. 1977).
90. Where practicable, planning and advanced classification of public lands for specific occupancy uses should be required. *Id.*		X		*Id.* § 1712(a).
91. Public land should be allocated to occupancy uses only where equally suitable private land is not abundantly available. *Id.* at 220.		X		*Id.* § 1712(c).
92. All individuals and entities generally empowered under state law to exercise an authorized occupancy privilege should be eligible applicants for occupancy uses, although a showing of financial and administrative capability should be required where large investments are involved. Lands generally should be allocated competitively where there is more than one qualified private applicant, but preference should be given to state and local governments and nonprofit organizations to obtain land for public purposes and to REA cooperatives where incidental to regular REA operations. *Id.*			X	
93. In general, disposal should be the preferred policy in meeting the need for occupancy uses that require substantial investment, materially alter the land, and are comparatively permanent in character, except where such uses are nonexclusive. *Id.*		X		*Id.* § 1732(b).
94. Where occupancy uses are authorized on obtained lands by permit, lease, or otherwise, (a) the term and size of permits should be adequate to accommodate the project and the required investment;			X	

	(b) compensation should be paid when the use is terminated by Federal action prior to expiration of the prescribed term; and (c) a preference right to purchase should be accorded to such users dependent on the lands if they are later offered for disposal. *Id.* at 221.			
95.	Public lands should not hereafter be made available under lease or permit for private residential and vacation purposes, and such existing uses should be phased out. *Id.* at 223.		X	*Id.*
96.	Land management agencies should have authority to require a reciprocal right-of-way on equitable terms as a condition of a grant of a right-of-way across public land. *Id.* at 224.	X		*Id.* §§ 1761(b)(1), 1765.
97.	A new statutory framework should be enacted to make public lands available for the expansion of existing communities and for the development of new cities and towns. *Id.* at 226.	X		*Id.* § 1713(a)(3).
98.	Whenever the Federal Government utilizes its position as landowner to accomplish, indirectly, public policy objectives unrelated to protection or development of the public lands, the purpose to be achieved and the authority therefor [sic] should be provided expressly by statute. *Id.* at 229.		X	
99.	While control and administration of occupancy uses should remain with the agencies managing the lands, assistance should be obtained from agencies having technical competence in connection with specific programs. *Id.*	X		*Id.* § 1732(b).
100.	The Secretary of the Interior should be authorized to approve other uses of railroad rights-of-way with the consent of the affected railroad, and persons holding defective titles from railroads to right-of-way lands should be confirmed in their uses by the Federal Government and the affected railroads. *Id.* at 230.	X		*Id.* §§ 1769(a), (b).

TABLE THIRTEEN

Recommendation	S/E*	S/M**	O***	Enacted In
101. If the national interest dictates that lands should be retained in Federal ownership, it is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the United States and is not borne only by those states and governments in whose area the lands are located. Therefore, the Federal Government should make payments to compensate state and local governments for the tax immunity of Federal lands. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 236 (1970).	X			31 U.S.C.A. § 1601 (West Supp. 1977).
102. Payments in lieu of taxes should be made to state governments, but such payments should not attempt to provide full equivalency with payments that would be received if the property was in private ownership. A public benefits discount of at least 10 percent but not more than 40 percent should be applied to payments made by the Government in order to give recognition to the intangible benefits that some public lands provide, while, at the same time, recognizing the continuing burdens imposed on state and local governments through the increased use of public lands. The payments to states should be conditioned on distribution to those local units of government where the Federal lands are located, subject to criteria and formulae established by the states. Extraordinary benefits and burdens should be treated separately and payments made accordingly. *Id.* at 237.		X		*Id.* § 1602.
103. In a payments-in-lieu-of-taxes system, a transition period should be provided for states and counties to adjust in changing from the existing system. *Id.* at 241.		X		*Id.*

TABLE FOURTEEN

Recommendation	S/E*	S/M**	O***	Enacted In
104. No additional grants should be made to any of the fifty states. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 243 (1970).			X	
105. Within a relatively brief period, perhaps from 3 to 5 years, the Secretary of the Interior, in consultation with the involved states, should be required to classify land as suitable for state indemnity selection, in reasonably compact units, and such classifications should aggregate at least 3 to 4 times the acreage due to each state. In the event the affected states do not agree, within 2 years thereafter, to satisfy their grants from the lands so classified, the Secretary should be required to report the differences to the Congress. If no resolution, legislative or otherwise, is reached at the end of 3 years after such report, making a total of 10 years of classification, selection, and negotiation, all such grants should be terminated. *Id.* at 245.			X	
106. Limitations originally placed by the Federal Government on the use of grant lands, or funds derived from them, should be eliminated. *Id.* at 247.			X	
107. The satisfaction of Federal land grants to Alaska should be expedited with the aim of completing selection by 1984 in accordance with the Statehood Act, and selections of land under the Alaska Statehood Act should have priority over any land classification program of the Bureau of Land Management. *Id.* at 249.			X	

TABLE FIFTEEN

Recommendation	S/E*	S/M**	O***	Enacted In
108. Congress should require public land management agencies to utilize rulemaking to the fullest extent possible in interpreting statutes and exercising delegated discretion, and should provide legislative restrictions to insure compliance with this goal. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 251 (1970).			X	
109. Congress should direct the public land agencies to restructure their adjudication organization and procedures in order to assure: (1) procedural due process; (2) greater third party participation; (3) objective administrative review of initial decisions; (4) more expeditious decisionmaking. *Id.* at 253.	X			43 U.S.C.A. § 1712 (West Supp. 1977).
110. Judicial review of public land adjudications should be expressly provided for by Congress. *Id.* at 256.	X			*Id.* §§ 1701(a)(6), (b).

TABLE SIXTEEN

Recommendation	S/E*	S/M**	O***	Enacted In
111. Statutes and administrative practices defining unauthorized use of public lands should be clarified, and remedies available to the Federal Government should be uniform among land management agencies. Where necessary, statutory authority for policing by Federal agencies should be provided. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 259 (1970).	X			43 U.S.C.A. § 1733 (West Supp. 1977).
112. An intensified survey program to locate and mark boundaries of all public lands based upon a system of priorities, over a period of years, undertaken as the public interest requires. *Id.* at 260.			X	
113. The doctrine of adverse possession should be made applicable against the United States with respect to the public lands where the land has been occupied in good faith. Citizens should be permitted to bring quiet title actions in which the Government could be named as defendant. The defenses of equitable estoppel and laches should be available in a suit brought by the Government for the purpose of trying title to real property or for ejectment. In cases where questions of adverse possession, equitable estoppel, and laches do not apply, persons who claim an interest in public land based upon good faith, undisturbed, unauthorized occupancy for a substantial period of time, should be afforded an opportunity to purchase or lease such lands. *Id.*			X	

TABLE SEVENTEEN

Recommendation	S/E*	S/M**	O***	Enacted In
114. Statutory eligibility qualifications of applicants for public lands subject to disposal should generally avoid artificial restraints and promote maximum competition for such lands. Preferences for certain classes of applicants should be used sparingly. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 265 (1970)			X	
115. Disposals in excess of a specified dollar or acreage amount should require congressional authorization. *Id.*	X			43 U.S.C.A. § 1713(c) (West Supp. 1977).
116. Where land is disposed of at less than fair market value, or where it is desired to assure that lands be used for the purpose disposed of for a limited period to avoid undue speculation, transfers should provide for a possibility of reverter, which should expire after a reasonable period of time. *Id.*		X		*Id.* § 1718.
117. Public lands generally should not be disposed of in an area unless adequate state or local zoning is in effect. In the absence of such zoning, and where disposal is otherwise desirable, covenants in Federal deeds should be used to protect public values. *Id.* at 266.		X		*Id.* § 1720.
118. Protective covenants should be included in Federal deeds to preserve important environmental values on public lands in certain situations, even where state or local zoning is in effect. *Id.*	X			*Id.* § 1718.
119. The general acquisition authority of the public land management agencies should be consistent with agency missions. *Id.* at 267.	X			*Id.* § 1715(b).
120. The general land acquisition authority of the public land management agencies should be revised to provide uniformity and comprehensiveness with respect to (1) the interests in lands which	X			*Id.* § 1715.

may be acquired, and (2) the techniques available to acquire them. *Id.*				
121. The public land management agencies should be authorized to employ a broad array of acquisition techniques on an experimental basis in order to determine which appear best adapted to meeting the problem of price escalation of lands required for Federal programs. *Id.* at 268.			X	
122. Congress should specify the general program needs for which lands may be acquired by each public land agency. *Id.* at 269.	X			*Id.* § 1715(b).
123. Justification standards for and oversight of public land acquisitions should be strengthened, and present statutory requirements for state consent to certain land acquisitions should be replaced with directives to engage in meaningful coordination of Federal acquisition programs with state and local governments. *Id.*		X		*Id.* § 1720.
124. General land exchange authority should be used primarily to block up existing Federal holdings or to accomplish minor land tenure adjustments in the public interest, but not for acquisition of major new Federal units. *Id.* at 270.	X			*Id.* § 1715.
125. Exchange authority of the public land management agencies should be made uniform to permit (1) the exchange of all classes of real property interests, and (2) cash equalization within percentage limits of the value of the transaction. *Id.* at 271.	X			*Id.* § 1716.
126. Generally, within each department, all federally owned otherwise available for disposal should be subject to exchange regardless of agency jurisdiction and geographic limitation. *Id.*		X		*Id.* § 1716(b).
127. Public land administrators should be authorized by law to dispense with the requirement of a formal appraisal: (1) in any sale or			X	

Recommendation	S/E*	S/M**	O***	Enacted In
lease where there is a formal finding that competition exists, the sale or lease will be held under competitive bidding procedures, and the property does not have a value in excess of some specified amount set forth in the statute; and (2) whenever property can be acquired for less than some specified price set forth in the statute, provided a formal finding is made that the property to be acquired has a value at least equal to the amount the Government would be paying in either a direct purchase or exchange. *Id.* at 272.				
128. Administration of all land acquisition programs for Department of the Interior agencies, including performance of the appraisal function, should be consolidated within the Department. Procedures, however, should be standardized for all public land management agencies. *Id.* at 273.			X	

TABLE EIGHTEEN

Recommendation	S/E*	S/M**	O***	Enacted In
129. Exclusive Federal legislative jurisdiction should be obtained, or retained, only in those uncommon instances where it is absolutely necessary to the Federal Government, and in such instances the United States should provide a statutory or regulatory code to govern the areas. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 278 (1970).			X	
130. Federal departments and agencies should have the authority to retrocede exclusive Federal legislative jurisdiction to the states, with the consent of the states. *Id.* at 279.			X	

TABLE NINETEEN

Recommendation	S/E*	S/M**	O***	Enacted In
131. The Forest Service should be merged with the Department of the Interior into a new department of natural resources. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 282 (1970).			X	
132. Greater emphasis should be placed on regional administration of public land programs. *Id.* at 284.			X	
133. The recommended consolidation of public land programs should be accompanied by a consolidation of congressional committee jurisdiction over public land programs into a single committee in each House of Congress. *Id.*		X		*See* S. RES. 4 (reorganizing Senate Committee structure), 95th Cong., 2d Sess. (1977).
134. The President's budget should include a consolidated budget for public land programs that shows the relationship between costs and benefits of each program. *Id.* at 285.			X	
135. Periodic regional public land programs should be authorized by statute as a basis for annual budgets and for appropriation of funds. *Id.* at 286.			X	
136. There should be a uniform, statutory basis for pricing goods and services furnished from the public lands. *Id.* at 287.			X	
137. Statutory authority should be provided for public land citizen advisory boards and guidelines for their operation should be established by statute. *Id.* at 288.	X			43 U.S.C.A. § 1739 (West Supp. 1977).